

Region 6/OECA

FY 2001

Memorandum of Agreement

**End-of-Year
Narrative Report**

November 16, 2001

NATIONAL PRIORITIES

Concentrated Animal Feeding Operations (CAFOs)

The emphasis in CAFO enforcement was on the large scale integrator operations, individual areas with water quality problems, or individual facilities that are causing or contributing to water quality problems. Increased emphasis and investigation focused on Seaboard facilities in Oklahoma. Specifically, it was determined that Seaboard constructed over 120 facilities without appropriate storm water pollution prevention plans. More important was the impact to groundwater that was identified in Major and Kingfisher Counties in western Oklahoma. After reviewing groundwater data submitted to the Oklahoma Department of Agriculture under the state permit we became concerned about possible contamination of shallow USDW aquifers in Major and Kingfisher Counties. Our investigations caused us to verify high concentrations of nitrates in drinking water wells at a number of swine production facilities and unfortunately at a number of private off-site drinking water wells. Within a matter of days of verifying that high nitrates were in a number of wells, the Region issued a 1431 imminent and substantial endangerment order to Seaboard under the Safe Drinking Water Act (SDWA). We moved very quickly because we identified a pregnant mother and a number of small children that were being exposed to high concentrations of nitrates in their drinking water. The order was issued on June 7, 2001, and required that Seaboard provide drinking water to impacted residents and employees within 24 hours. The order was successful in remedying the problem quickly. Negotiations are continuing to identify other possible impact areas. Inspection of contract growers also began during 2001 and will continue into FY2002, as the Region examines the scope and nature of possible problems at their growers facilities.

In Texas, the Region and the State identified four streams in the Bosque River watershed with impaired water quality due to nutrients in the streams. Each of these watersheds contain a heavy concentration of CAFOs, primarily dairy operations and a smaller number of unpermitted smaller animal feeding operations (AFOs). Within the Bosque River watershed the State inspected the CAFOs and provided compliance assistance to facilities with noncompliance problems. Followup inspections were conducted at the facilities with noncompliance problems to assure that the noncompliance issues were corrected. In addition, the State inspected CAFO operations outside of the Bosque River watershed, and provided compliance assistance to facilities where noncompliance problems were found. There was one civil action settled by the DOJ against International Beef Processors in east Texas. Within New Mexico, there are no stream segments with water quality problems caused by nutrients which could be associated with discharges from CAFO operations. There are 50 CAFOs within the state of New Mexico and 152 AFOs. EPA issued administrative orders to non-compliant CAFOs located as a result of inspections in New Mexico. We also issued Orders for Information to unpermitted facilities in New Mexico, requiring submission of the necessary information documenting adequate storage capacity for waste and storm water runoff from the operations, and documenting there had been no discharges from the facility. As a result of these actions, we developed one civil referral to the Department of Justice against a non-compliant CAFO in New Mexico.

Storm Water - Construction Activities

Under the storm water construction permit, construction activities of five or more acres are identified as industrial activities subject to the NPDES storm water permitting program. Region 6, and in particular Texas, is a very rapidly growing area of the country with a lot of construction. Region 6 has worked closely with the National Association of Home Builders, Associated Builders and Contractors, and Associated General Contractors, to educate their members on how to comply with the storm water construction regulations. This has included developing a web page with all necessary documents and information for compliance with the storm water construction program. An enforcement training conference was provided for State inspectors and enforcement officers in November 2000, and February 2001, with a combined attendance of 170 government employees. Investigations were initiated resulting in 12 administrative orders issued for construction violations in FY 01. EPA Region 6 Storm Water Enforcement issued a total of 38 Administrative Orders and 25 Administrative Penalty Orders in FY 01. We continue to perform inspections and work with the State and local municipalities. There has also been a very close enforcement relationship developed with a number of municipalities, as they begin implementing their Storm Water Management Programs. The city of Dallas has taken a strong enforcement posture in enforcement of their MS4 Program and subsequent quarterly reports of non-complying industries. EPA has initiated 20 enforcement actions as a result. The city of Houston is following Dallas' lead. The storm water industrial permit enforcement was assumed by the Texas Natural Resource Conservation Commission (TNRCC) on August 21, 2001, at the time of TNRCC's issuance of the TPDES General Permit for Industrial facilities that discharge storm water (TXR050000). The TNRCC has taken over the enforcement lead as a result.

The Wal-Mart storm water enforcement case was settled in August 2001. This settlement was the first federal government enforcement action against a national company for multi-state violations of the Clean Water Act Storm Water provisions. The settlement covers 17 Wal-Mart construction sites in 4 states with 16 of the sites in Region 6 states. (Four of the sites are in the Dallas area.) The settlement requires Wal-Mart to pay a \$1 million penalty and implement a comprehensive environmental management plan, valued at \$4.5 million, to assure future compliance at each of the store's construction sites nationwide.

Other significant actions taken to address storm water problems include a recent referral against an oil and gas production company operating numerous gas production facilities in Oklahoma. This case was developed and forwarded to Headquarters at the end of the fiscal year (September 2001) in response to citizen complaints and to address significant water quality problems. The facility created excessive erosion, significant stream sedimentation and some stream re-alignment on a number of large drilling pad sites and during the construction of access roads. This was done without the appropriate storm water and 404 permits and without the appropriate pollution control measures in place. A request for legal action to address these problems is now pending at EPA Headquarters.

Additional enforcement actions were initiated to support state program development and address

particularly difficult situations in Oklahoma, Arkansas and Louisiana. In Arkansas, the Region received its first referral from the state, regarding inadequately controlled runoff from a construction site in the Little Rock area. To address this problem, the Region worked with the Arkansas Department of Environmental Quality (ADEQ) to collect an administrative penalty from the contractor (Langston Construction) for inadequate site controls. The Region also worked with the Oklahoma Department of Environmental Quality (ODEQ) to address runoff from industrial facilities through its pending administrative penalty actions against Cyril Petroleum and Quantum Energy. In Louisiana, the Region is moving to address significant discharges from a large salvage yard in the New Orleans area through its request for civil referral that was sent to EPA Headquarters in September. The Region is seeking development and implementation of a storm water pollution prevention plan for the site, as well as an appropriate penalty to serve as a deterrent to other possible violators.

Outreach efforts during FY2001 in Arkansas and Louisiana were also important. A storm water training session jointly sponsored by EPA and ADEQ for builders, consultants and municipalities was held in Little Rock in April, with over 150 in attendance. Three training sessions in Baton Rouge, Jefferson Parish and Alexandria were also very successful in Louisiana. Over 300 entities (builders, contractors, industries, and municipalities) were provided with information regarding storm water requirements.

Sanitary Sewer Overflows (SSOs)

We continued to require that Sanitary Sewer Overflows (SSO) problems in Arkansas be addressed in a systematic manner, through orders that have been previously issued to the cities of Fort Smith and Hot Springs. In Louisiana, we aggressively pursued significant SSO problems on non-delegated facilities, including a number of legal actions, orders, and monitoring of existing consent decrees. SSOs are significant components of our actions against several cities. We continue to monitor \$300-400 million of SSO work in the New Orleans area. More than 70 Oklahoma cities are under state or federal order to address overflows and bypasses. The Region also forwarded two new civil referrals which include SSO problems to be addressed during FY2001. We (EPA/TNRCC) completed investigation of SSOs in the small communities surrounding Texas Galveston Bay. Also in Texas, there were EPA compliance evaluation inspections of municipal POTWs, which included an investigation for sanitary sewer overflows. Each Texas municipality reporting SSOs were investigated and where the SSOs were an issue, the communities were issued administrative orders requiring the cities to conduct a diagnostic study of their sanitary sewage collection systems to identify the source of the SSO problems, and to implement systems improvements identified from the study.

Safe Drinking Water -Microbial Rules

As delineated in the MOA, there were several PWS systems that were in significant non-compliance (SNC) with the Total Coliform Rule, as well as other Drinking Water rules. We aggressively monitored and tracked the respective SNCs; and through diligent negotiations and discussions with the Region 6 States, the SNCs will be addressed. Meanwhile, due to the Region 6 State's reduction in FTE levels, mandated from their state legislatures, coupled with a higher than normal loss of staff through attrition, and the Region 6 Consumer Confidence Rule formal actions significantly increased during the FY 1998-2000 time frame, the percentage of new PWSS SNC addressed has fallen in FY 2001. Based on our records and information, the Region 6 States have been taking formal actions against PWSS SNC violators in FY 2001, but due to reasons mentioned above, States did/could not report their enforcement actions into SDWIS.

Clean Air Act - Air Toxics

As an FY 00 MOA activity, Region 6 agreed to assist the Office of Air Quality Planning and Standards (OAQPS) in promulgating the maximum achievable control technology (MACT) standards for catalytic cracking units at petroleum refineries and also assist in developing its MACT assistance tools. Because the MACT standards were not promulgated in FY00 nor the Region's assistance requested by OAQPS, this MOA was carried over to FY 01.

Although EPA first proposed this MACT in the Federal Register on September 11, 1998, the MACT was not promulgated in FY 01. The most recent status report from OAQPS on November 7, 2001, indicates that the MACT's final promulgation package was resubmitted to OMB for review on August 29, 2001. This MOA activity will carry over to FY 02 and focus on development of MACT related compliance assistance and inspection check list(s), with any changes to be made as dictated by its final promulgation.

Permit Evaders - US Mexico Border Warehouse Joint Project

The Environmental Protection Agency (EPA) and the TNRCC Joint Border Warehouse Initiative was developed in order to conduct warehouse inspections along the U.S./Mexico Border. The City of Laredo, Texas, was chosen because of the large amount of warehouses (approximately 2000) that are located in the area. Local citizens had been concerned that improper storage of hazardous materials could result in the contamination of the Rio Grande river, the city's principal source of drinking water, or the exposure of the public to danger. EPA and TNRCC was concerned that increased amount of international trade between the two countries, along with minimal regulatory presence in Laredo, Texas, created the potential for illegal hazardous waste management practices.

In September, 2000, eight inspectors representing the EPA and TNRCC conducted inspections of approximately 216 warehouses that were not regulated (not registered to handle hazardous waste) in order to determine the extent of the mis-management of hazardous waste (violations of the Resource Conservation Recovery Act (RCRA) requirements). The inspections determined

that 36 facilities (17%) were found to be non-compliant, three of which have pending enforcement actions (EPA led) that include monetary penalties. The investigations identified that the majority of the violations were due to the warehouse industry's lack of knowledge regarding hazardous waste and RCRA. The investigations also identified that the two main activities that were causing the majority of the violations were abandoned hazardous products/hazardous waste and sham recycling. In an effort to assist the warehouse industry, EPA and TNRCC established a compliance assistance seminar in order to help bring awareness to the warehouse industry. The objective of the seminar was to bring awareness of hazardous waste requirements, awareness of abandoned hazardous materials/waste and sham-recycling activities, and self disclosure procedures. The first seminar was held in Laredo, Texas on June 28, 2001, where approximately 40 companies attended. From the seminar, approximately 10 companies contacted the TNRCC to report potential RCRA violations. EPA and TNRCC determined that there was a need to continue the Initiative in order to determine additional sham recycling activities, and continue to bring compliance assistance to the warehouse industry.

During the week of September 10, 2001, thirteen inspectors representing the EPA and TNRCC conducted an additional 256 warehouse inspections that were not regulated. The inspections have determined that approximately 34 facilities (13 percent) were found to be non-compliant, several of which have the potential to be involved in sham recycling activities and thus lead to EPA led enforcement actions.

The month of October, 2001, the TNRCC, with the help of EPA and other State and local agencies, developed the International Border Workshop for Hazardous Materials. Topics included the proper storage and transport of hazardous substances. EPA concentrated on the continued effort of bringing awareness to the warehouse industry regarding the proper management of hazardous waste, abandoned hazardous materials/waste, sham-recycling activities, as well as self-disclosure procedures. The dates of the seminars, as well as locations, were as follows:

Brownsville, Texas	October 1-2, 2001
McAllen, Texas.....	October 3-4, 2001
Laredo, Texas.....	October 10-11, 2001
El Paso, Texas.....	October 25-26, 2001.

Additional warehouse inspections have also been planned for January, 2002 in Del Rio, Texas, where State and Federal regulatory presence for RCRA has been minimal. In addition, a one-day seminar has also been planned for February, 2002 in the Laredo, Texas or Del Rio, Texas, area. The seminar will focus on the continued theme of bringing awareness of the activities that are causing the RCRA violations to occur at warehouses located along the border, and how to prevent these violations from occurring in the future.

Petroleum Refinery Initiative and New Source Review/Prevention of Significant Deterioration

The EPA undertook a nationwide investigation of air pollution emissions from refineries. Because many refineries were vastly increasing production, EPA wanted to make sure that these facilities were installing the proper pollution equipment to control hazardous air pollutants and smog causing chemicals. Refineries are located in all five Region 6 states, but are primarily located in Louisiana and Texas. Refineries in Region 6 account for approximately 50 percent of the refinery capacity in the U.S. and a significant number of facilities.

As part of the investigation, which included working closely with the states, EPA focused on four areas of concern: 1) flaring, 2) leak detection and repair, 3) potential violations of rules related to benzene waste, and 4) potential violations of preconstruction permitting issues. Consent Decrees have been entered with about 50 % of U.S. refining capacity and another 30 % are under active investigation.

A Consent Decree was entered for the global **Marathon Ashland Petroleum** case on August 28, 2001. The settlement includes seven refineries in the U.S. comprising about six percent of national capacity, and addresses all four marquee issues: PSD/NSR, benzene waste NESHAP, leak detection and repair, and flaring including NSPS J. The anticipated NOx and SO2 emission reductions are over 20,000 tons per year. The Consent Decree provides for payment of a civil penalty of \$ 3.8 million and a commitment for \$ 6.6 million to be spent on supplemental environmental projects. Enhanced injunctive relief on control equipment expenditures is estimated to be \$ 300 million. Louisiana, Minnesota and Wayne County (MI) joined as intervenor-plaintiffs.

A Consent Decree was entered for the global Motiva/Equilon/Shell Deer Park case on August 22, 2001. The settlement includes nine refineries in the U.S. comprising about ten percent of national capacity and addresses the same four marquee issues. The anticipated NOx and SO2 emission reductions are over 50,000 tons per year. The Consent Decree provides for payment of a civil penalty of \$9.5 million and a commitment for \$5.5 million to be spent on supplemental environmental projects. Enhanced injunctive relief on control equipment expenditures is estimated to be \$400 million. Delaware, Louisiana, and Northwest Air Pollution Control Authority joined as intervenor-plaintiffs. The federal Consent Decree was lodged simultaneously with two state actions filed in Delaware and Louisiana.

We took a very active role, and continue to do so, throughout the ongoing investigations and enforcement efforts to reach global settlement agreements.

Metal Services Sector

The metal services industry is subject to a very broad spectrum of Federal environmental statutory and regulatory requirements, including air, water, and hazardous waste regulations. It is an important sector economically with a large number of facilities nationally, potentially as high as 10,000. The majority of metal finishing job shops are small businesses. The noncompliance problems typically found within the metal services industry generally arise from an inattention to various operating and maintenance requirements that prevent releases of pollutants. These noncompliance problems are often quite varied, depending on the size, sophistication, and technical and financial resources available to the facility. They rarely require the types of relief common to other national priority sectors, e.g. the capital-intensive technological remedies often required of the petroleum refining and coal-fired power plant sectors. The Office of Enforcement and Compliance Assurance has concluded that the metal services industry is best addressed by regional, state and local programs, that are likely to achieve better sector-wide compliance at reduced costs. These programs are well-equipped to determine the appropriate mix of compliance assistance programs and strategically targeted enforcement actions that will achieve the best results in their area.

Region 6 participates in several activities relative to the metal services sector that include compliance assistance and pollution prevention. Region 6 is an active participant in the National Strategic Goals Program for Metal Finishers (SGP), a voluntary, public-private partnership. As part of the SGP activities, Region 6 staff meets on a regular basis with several industry representatives along with regulatory agencies to discuss compliance issues that include hazardous waste management practices and permit exceedances. These issues are aimed at reducing hazardous emissions and encouraging materials conservation. Companies making progress toward meeting the goals receive benefits from local regulatory agencies, along with technical assistance from both state and federal government. Additionally, the Small Business and Local Government Assistance program at the TNRCC conducts pollution prevention and compliance assistance audits at several facilities as part of its compliance assistance efforts. To measure success, approximately 42 facilities have signed up to participate and receive the benefits of SGP. Additionally, facilities submit annual progress reports to a national data collection center that displays real-time results on the Internet.

Prior to and continuing through FY 01, EPA has been conducting extensive compliance assistance activities for the metal services sector. These activities have included providing approximately one million in funding for the National Metal Finishing Resource Center since 1995; publishing the Metal Finishing Guidance Manual - a plain language multimedia compliance tool for shop floor managers; publishing a plain language guide to the Chromium Electroplating MACT; developing a Halogenated Solvent expert system; developing a compliance video; and holding numerous workshops for individuals within the metal services sector. Region 6 has also undertaken a number of enforcement activities including several regional initiatives and a national Nitrate Initiative. Metal finishers, a subset within the broader metal services sector, were one of six industrial areas upon which EPA focused an audit/self-disclosure initiative to improve communities' right-to-know.

REGIONAL PRIORITIES

Federal Facilities

The Region 6 Federal Facilities Program compliance assistance efforts included conducting Environmental Management Reviews (EMRs) at four Federal facilities, with a special emphasis on working with the Department of Interior and three of its National Park Service sites. Each EMR included a mini training session on the EPA Region 6 geographical information system screening tool. In cooperation with the USDA Forest Service, we provided a special one-week training course on sanitary surveys. A NEPA writing training course was also provided.

Region 6 placed special emphasis on Pollution Prevention (P2) activities which included participation in the Region 6 P2 Conference and attending several Texas P2 Partnership meetings, held at various Federal installations throughout Texas. The Region 6 Federal Facilities Program and Environmental Justice program participated in other agencies national conferences.

Region 6 Federal facilities compliance status includes seven facilities that are in significant noncompliance, with one paying a penalty of \$26,180. Federal facilities are also participating in SEPs under the Enforcement program.

Problem Oil Pits (POPS)

Region 6 chose this priority to address oil field waste disposal pits in Arkansas that pose a threat to human health and/or the environment.

Initially, the project was identified as POPs because the focus was to be on addressing pits or ponds that contain oil which pose a threat to human health or the environment, primarily migratory birds and other wildlife. Previously, the U.S. Fish and Wildlife Service (FWS) determined that pits or ponds containing oil pose a threat to migratory birds and other wildlife. They identified, through aerial surveys, numerous sites in southern Arkansas that appeared to exhibit this type of threat. As a result, during the past fiscal year, a partnership formed between members of the FWS, EPA, Arkansas Oil and Gas Commission (AOGC), and ADEQ. Through this partnership, additional concerns are being addressed regarding oil field sites in southern Arkansas, such as inadequate containment for tanks and actual or potential discharges of oily waste to waters of the United States. For this reason, the initiative is now being referred to as the "Southern Arkansas Environmental Improvement Project". The Region 6 Hazardous Waste Enforcement program has been actively involved in the project, along with the Oil Spill Response and Prevention program. Numerous meetings and conference calls have been held over the past year to coordinate this initiative. Additionally, three workshops were held in southern Arkansas for the oil exploration and production industry, as well as oil field waste handlers, to explain the concerns, as well as the state and federal regulations relevant to their businesses. We participated in the workshops by providing information to attendees regarding the Resource Conservation and Recovery Act (RCRA) exemption for exploration and production wastes and EPA's ability to use Section 7003 of RCRA to address imminent and substantial endangerment situations related to solid waste. Over 100 people attended the workshops. Site visits of potential problem areas, along with steps to correct those problems, will be conducted in fiscal year 2002.

Episodic Releases

Eleven companies were invited to participate in an initiative with Region 6, the TNRCC, and the Louisiana Department of Environmental Quality (LDEQ), to reduce episodic releases. Two additional companies co-located with the original 11 asked to be part of the work group. These thirteen companies account for approximately 50 percent of all releases reported to the Emergency Response Notification System (ERNS) in the Region.

After identifying the root causes of episodic releases, the ten factors involved in the releases, and developing a list of best management practices, each work group member agreed to implement the best practices for their facility.

The expected results are reductions in emissions, improved response to citizen concerns, and improved capacity building efforts with states in dealing with releases. Through 2001, the ERNS reporting showed a 28 percent reduction in the number of releases and a 48 percent reduction in the pounds released. Some of the best management practices will be implemented over the next couple of years, resulting in further reductions. There has also been a community outreach effort through newspaper articles, industry and government speakers at various events, and presentations to local community action panels.

The TNRCC, and at least one industry group, have started similar programs and it is hoped to incorporate State Implementation Program (SIP) credit for VOC reductions that are believed to cause increased rapid raise ozone.

A final report explaining the process used, root causes of the releases, and areas considered for further study was completed on July 5, 2001.

Title V - Operating Permit Enforcement

All five Region 6 states are reviewing Annual Compliance Certifications (ACC). The state's ACC forms were designed for the source's responsible official (RO) to use all credible evidence when the RO indicate their compliance status. Also, the RO is required to provide detailed information when a deviation from a title V permit term or condition exists. The ACCs helps improve air quality by increasing the awareness and responsibility of high level source managers to certify the compliance status of their facility.

Region 6 conducted an administrative review of all ACCs. A more thorough review was conducted on over 30 ACCs. These reviews helped target facility-wide, FY 02 air inspections. Procedures have been created to incorporate the ACCs into facility-wide air inspections. Region 6 Inspectors and/or Enforcement Officers are required to review the ACCs prior to the inspections to identify targeted emission units, applicable requirements, and deviations/areas of concern. The reviewers are required to compare the inspection results to the ACC. The ACC reviews are used as enforcement tools to assure and improve air quality and compliance.

Region 6 states continue to process Notice of Violations, Notice of Potential Penalty, Administrative Penalty Orders, and Consent Administrative Orders. The majority of violations

range from late/failure to submit Title V permit applications, late/failure to submit monitoring reports and ACC, and for operating without a Title V permit.

On November 14-15, 2000, Region 6 met with Region 6 States to discuss a Region-wide enforcement initiative. The focus of the initiative was to conduct an enforcement investigation against a company operating numerous facilities in multiple Region 6 states. As a result, states conducted a thorough review of ACCs, deviation reports and inspection reports on Duke Energy Field Service. On April 4, 2001, Region 6 hosted a meeting with enforcement representatives from TNRCC, ODEQ, and the New Mexico Environmental Department (NMED) and Duke Energy Field Service Inc. The purpose of the meeting was to discuss Title V compliance and reporting responsibilities, and to address non-compliance issues discovered in Region 6's Title V enforcement initiative. This effort discovered 27 emission based problems and 198 non-emission based problems such as late, or failure to submit, Title V reports. All noncompliance issues were addressed by the states while EPA served more as a coordinator and advisor. The TNRCC issued an Agreed Order with a total penalty of \$243,570 (\$121,785 in supplemental environmental projects). The NMED settled the Notice of Violation for a civil penalty of \$225,000 (\$100,000 cash and \$223,000 in supplemental environmental project). Also, NMED is under pending investigation for additional sulfur dioxide violations that may result in a civil penalty of \$7 million. The ODEQ pending enforcement action expects to settle in calendar year 2002.

Consumer Confidence Report (CCR) Rule

Region 6 continued to implement the formal enforcement actions for Consumer Confidence Report (CCR) Rule. We believed that several of the Region 6 States would have primacy for the CCR rule for 1999 reports, and the States would initiate a CCR enforcement strategy. Except for the State of Oklahoma, none of the Region 6 States or Tribes have adopted primacy for the CCR rule. Therefore, we were required to take all enforcement actions for the FY 1999 CCR violations in four other States. In January 2000, the PWS Enforcement Team was advised by the respective States that there was a total of 426 community water systems in violation of the CCR rule, as they had failed to generate and distribute a copy of the CCR report to their customers for the calendar year 1999.

Region 6 made it a priority to initiate all the enforcement actions for the 1999 CCR violations due to the lack of primacy for this Rule by the Region 6 States. The PWS Enforcement Team worked closely with the States to bring several of the non-compliant systems back into compliance. We sent 317 Notice of Violations (NOVs), 139 Administrative Orders (AOs) and 25 Administrative Penalty Orders (APOs) against those respective violators. After initiation of EPA Region 6 enforcement actions, the compliance rate went up to 99.7 percent from 96 percent in FY 1999.

U.S./Mexico Border Warehouse Initiative

The Border Warehouse and Transfer Facility (as part of Region 6 RCRA border warehouse initiative with TNRCC) seminar was developed as part of the joint inspection and enforcement strategies of the Region 6 Joint Border Warehouse Initiative developed with the TNRCC. During inspections conducted in FY 00 and FY 01, EPA and TNRCC identified that of the approximately 500 non-regulated warehouses (not registered as handlers of hazardous waste) inspected, approximately 17 % were managing hazardous waste in violation of the Resource Conservation Recovery Act (RCRA). The investigations identified that the majority of the violations were due to the warehouse industry's lack of knowledge regarding hazardous waste and RCRA requirements. The investigations also identified that the two main activities that were causing the majority of the violations were abandoned hazardous products/hazardous waste and sham recycling.

The inspections and investigations identified that the improper storage of hazardous waste at non-regulated warehouses (Warehouses) was caused by hazardous product that had been abandoned at the warehouse and had become hazardous waste over time. Additionally, the inspections and investigations identified that sham recycling activities were also causing the improper storage of hazardous waste at the Warehouses. In an effort to assist the Warehouses, EPA and TNRCC established several compliance assistance seminars (Seminars) which included topics on potential preventative measures in order to avoid the management of abandoned hazardous products, and self disclosure procedures to report sham recycling activities to the TNRCC or EPA. The Seminars were developed for the purpose of raising awareness and knowledge regarding hazardous waste and RCRA requirements, as they relate to abandoned products and sham recycling, in order to help prevent Warehouses from managing hazardous waste.

The seminars, along with the inspections/enforcement strategies involved with the Border Warehouse Initiative, have helped protect the U.S./Mexico Border community and environment by helping to ensure that Warehouses are not managing hazardous waste. Approximately 76 Warehouses that were found to be non-compliant during the inspections have, or are in the process of, meeting the RCRA requirements and returning to compliance. Additionally, the Seminars have created opportunities where Warehouses can self-disclose. Of the thirty companies that attended the June, 2001 seminar, ten companies self-disclosed to the TNRCC regarding RCRA violations. All ten got the necessary help in order to be in compliance with RCRA requirements.

CASE SUMMARIES

REGION 6

Marathon Ashland Petroleum: On August 28, 2001, a Consent Decree was entered for the global case. The settlement includes seven refineries in the U.S., comprising about six percent of national capacity, and addresses all four marquee issues: PSD/NSR, benzene waste NESHAP, leak detection and repair, and flaring including NSPS J. The anticipated NOx and SO2 emission reductions are over 20,000 tons per year. The Consent Decree provides for payment of a civil penalty of \$ 3.8 million and a commitment for \$ 6.6 million to be spent on supplemental environmental projects. Enhanced injunctive relief on control equipment expenditures is estimated to be \$300 million. Louisiana, Minnesota and Wayne County (MI) joined as intervenor-plaintiffs.

Motiva/Equilon/Shell Deer Park: On August 22, 2001, a Consent Decree was entered for the global case. The settlement includes nine refineries in the U.S. comprising about ten percent of national capacity, and addresses all four marquee issues: PSD/NSR, benzene waste NESHAP, leak detection and repair, and flaring including NSPS J. The anticipated NOx and SO2 emission reductions are over 50,000 tons per year. The Consent Decree provides for payment of a civil penalty of \$ 9.5 million and a commitment for \$ 5.5 million to be spent on supplemental environmental projects. Enhanced injunctive relief on control equipment expenditures is estimated to be \$ 400 million. Delaware, Louisiana, and Northwest Air Pollution Control Authority, joined as intervenor-plaintiffs. The federal Consent Decree was lodged simultaneously with two state actions filed in Delaware and Louisiana.

U.S. v. Nucor Corporation: On June 20, 2001, the U.S. District Court in Florence, S.C., entered the Consent Decree with the Nucor Corporation (“Nucor”) for settlement of multi-media violations at eight steel mills and three steel fabrication facilities. The facilities are located in seven states in EPA Regions 4, 6, 7, and 8. We alleged that Nucor violated the PSD and NSPS provisions of the Clean Air Act and that its mismanagement of K061 dust, a waste product from the electric arc furnaces (“EAFs”) and a RCRA listed hazardous waste, was disposed of illegally at the facilities and contributed to NPDES and Industrial Storm Water violations of the Clean Water Act. The settlement is the result of the first use of “global” resolution. We selected three steel mills and two steel fabricating facilities to serve as “prototype” facilities. Based on the information garnered from the prototype facilities, we fashioned an injunctive relief program for all eleven of the facilities. This prototype approach allowed us to complete the investigation and reach an Agreement in about 12 months.

The settlement will require Nucor to pilot technologies for control of NOx emissions from its EAFs and reheat furnaces, to include SCR and SNCR, technology at four mills, then install the best performing technology at all the remaining facilities. Over the eight-year compliance schedule, Nucor’s emissions from the EAFs and reheat furnaces will be capped at current limits until controls are in place. Under RCRA, Nucor will perform sampling of ground water and soils at all facilities, identify areas of contamination and perform corrective action in accordance with an EPA-approved statement of work for each facility. States will be given the opportunity to oversee the cleanups. Nucor will pay a civil penalty of \$9 million, and spend \$4 million on community-based SEPs.

U.S. v. Willamette Industries, Inc.: On November 2, 2000, the U.S. District Court for the District of Oregon entered a Consent Decree with Willamette Industries, Inc. (“Willamette”) for settlement of Clean Air Act (CAA) and State Implementation Plan (SIP) violations at over 12 wood products manufacturing plants in the States of Arkansas, Louisiana, Oregon and South Carolina. The Consent Decree ordered Willamette to pay a civil penalty of \$11.2 million, spend an additional \$8 million in supplemental environmental projects (SEPs), and install advanced air pollution control technology, costing as estimated \$74 million, on 31 units at 13 facilities in the four States. This is a landmark CAA settlement resulting from EPA’s National Wood Products Initiative, which was begun in 1990.

Petroleum Wastewater Recycling (PWR): The Region brought two civil administrative actions against PWR, located in Oklahoma City for violations of the Resource Conservation & Recovery Act (RCRA). PWR was storing over one million gallons of ignitable liquids contaminated with hazardous wastes (chlorinated organic solvents and heavy metals) without a RCRA Permit. The wastes presented a potential threat to the North Canadian River, personnel working at nearby industries, and local tourist attractions. In the summer of 2000, the Fire Marshall was forced to evacuate several neighboring industries because of potential explosion hazards. The site was not secure from public access, was adjacent to railroad right-of-way, was within a couple blocks of the Farmer’s Market and Stockyards, and was frequently used as a hobo campground. Penalties were assessed in excess of \$2.8 million. However, the owner had no ability to pay penalties or to clean up the wastes. The Region successfully negotiated clean-up and disposal utilizing third parties (Safety Kleen) at little or no cost to the government and taxpayers.

Safety-Kleen: Denton, Texas (TXD077603371). Safety-Kleen is a recycling center that specializes in the recovery and recycling of spent solvents and associated hazardous waste due to their ignitability and/or toxicity. A Resource Conservation and Recovery Act (RCRA) Permit, No. HW-50163, was issued for the facility on August 9, 1994. The permit authorizes the facility to accept and process a wide array of hazardous wastes with no disposal on-site. On September 22, October 1, and October 6, 1998, Region 6 concluded a Compliance Evaluation Inspection (CEI) at Safety-Kleen. On November 12, 1999, EPA conducted a follow-up CEI and noted the following violations: (1) treatment and/or storage of hazardous waste without a permit in the day tanks, the debris sorting table, and the fluid recycling service unit, and (2) failure to control air emissions for containers under subpart CC.

On March 28, 2000, EPA issued an Administrative Order assessing a civil penalty of \$1,617,908 plus injunctive relief. Safety-Kleen expressed an interest in performing a Supplemental Environmental Project (SEP). The SEP that Safety-Kleen Systems, Inc., (Denton, Texas) wanted to implement was to remove and treat/dispose/recycle approximately 739,000 pounds of hazardous waste from Petroleum Wastewater Recycling (PWR), Oklahoma City, Oklahoma. HQ did not approve this SEP; however, Safety-Kleen is performing this project without receiving any credit or penalty reduction.

On June 9, 2000, before we completed the settlement negotiation, Safety-Kleen Corp., filed petitions for Chapter 11 relief with the United States Bankruptcy Court for the District of Delaware. Subsequently, Frontier’s (Insurance provider of Safety-Kleen’s financial assurance)

ability to secure federal bonds was terminated by the Department of Treasury. The Consent Agreement and Consent Order assessing a civil penalty of \$105,433 plus injunctive relief was filed on June 11, 2001.

Seaboard Farms: Docket Number RCRA-06-2001-0908: Resource Conservation Recovery Act (RCRA) Section 7003 Order for Seaboard Farms, Inc., Shawnee Funding Limited Partnership, and PIC International Group, Inc. (Respondents): On June 26, 2001, the Environmental Protection Agency (EPA) Region 6 filed an Unilateral RCRA Section 7003 Imminent and Substantial Endangerment Administrative Order alleging that by allowing swine effluent to leak from facility infrastructures into ground water, the Respondents have mishandled a solid waste. This mishandling presents an imminent and substantial endangerment to public health and the environment. When presented with this unique situation, EPA determined that immediate action was warranted and in consideration of the regulatory tools available to EPA, the use of the Safe Drinking Water Act and RCRA were determined to be the appropriate tools to protect human health and the environment. This is the first RCRA 7003 nationally to be issued to a confined animal feeding operation.

The swine production Facilities (Lacey 1, 3, 4, 6 and Fairview Nursery Complex) are located in Kingfisher County and Major County, Oklahoma. Ground water samples taken from the Facility sites, indicate significant increases in concentrations of nitrate-nitrogen occur within the Facilities boundaries. Offsite nitrate impacted water has been detected down-gradient from these Facilities and EPA believes the Facilities are the source. Nitrate-nitrogen concentrations in excess of safe limits were found in samples from private drinking water wells located down-gradient from the Facilities. The Section 7003 order addresses the mishandling of solid waste. The Section 7003 Order requires the Facilities to: perform an investigation to fully determine the nature and extent of any release(s) of solid waste at or from the Facilities, perform a study to identify and evaluate alternatives for remedial action(s) to prevent or mitigate any release(s) of solid wastes at or from the Facilities, collect any other information necessary to support the selection of remedial procedures at the Facilities, and implement the remedial procedures selected by the EPA for the Facilities.

Walmart: The U.S. Department of Justice issued a press release jointly with EPA on June 7, 2001, announcing a settlement with Wal-Mart for violations of the Clean Water Act's NPDES storm water construction general permitting program at 17 facilities in Texas, New Mexico, Oklahoma and Massachusetts. The settlement includes a penalty of \$1,000,000, and approximately \$4,500,000 in implementation of environmental management plans (this includes some cost requirements for compliance that already exist under the NPDES program as well as some additional requirements such as discharge monitoring that was not required under NPDES general permits). This is the first multi-state enforcement action under the NPDES storm water program. Per the Consent Decree, EPA will be meeting with Wal-mart quarterly to discuss compliance with the terms of the decree. The first Quarterly meeting was November 7, 2001.

The primary pollutant of concern in construction storm water discharges are suspended solids from erosion of sediment. Suspended solids are usually not toxic, but are a carrier of other

pollutants that may be toxic. Additionally, high suspended solids effect the dissolved oxygen in water, reduce light penetration and the heavier solids will settle out and change the biological characteristics of a receiving water body. Sedimentation/siltation are the number one reason for degrading of wetland integrity and is the third leading pollutant/stressor impairing lakes (behind nutrients and metals) according to the CWA 305(b) 1998 Report to Congress (Figures 4-4 and 6-12, pages 87 and 149 respectively). It is the goal of the CWA and EPA that all waters of the United States should be fishable and swimmable and EPA is working with the construction industry to achieve these goals.

Barksdale Air force Base (LA) and Tinker Air Force Base (OK): The two cases against Barksdale and Tinker Air Force Bases were instrumental in obtaining a final decision from the Department of Justice that ruled that EPA can issue penalties against Federal facilities for violations of UST regulations. On October 27, 2000 and November 7, 2000, EPA settled a lawsuit against the U.S. Air Force at Barksdale and Tinker Air Force Bases respectively for violations of underground storage tank (UST) regulations. As a result of the lawsuit, Barksdale agreed to pay a penalty of \$38,340 and Tinker agreed to pay a penalty of \$51,500 and correct all violations. The alleged violations were found during routine UST compliance inspections in 1997.

EPCRA 313's National Nitrate Initiative Successful: Nationally, more than 600 companies agreed to audit more than 1,000 facilities for regulatory obligations under the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313, toxic chemicals emissions. Region 6 had close to 200 companies notified of which 45 participated in the initiative. Of the 45, 22 entered into a Nitrate Agreement which resulted in \$80,000 worth of penalties being collected. Subsequent in depth investigations from the remainder of those original 45 companies yielded most often they were well below thresholds for reporting, and thus did not have to perform further investigations. More importantly, nitrate emissions from these facilities became available to the public, local and state governments, and the federal government. Nationally, this equated to an additional 250 million pounds of previously unreported nitrates that were transferred to publicly owned treatment works.

The 22 specific facilities which entered into the Nitrate Agreement and which subsequently reported emissions of nitrates are as follows: Academy Corporation, NM; Northrup Grumman, TX; Leviton Manufacturing Company, TX; Metal Processing Company, Inc., OK; Midwest Trophy, OK; STMicroelectronics, Inc., TX; Superior Industries, AR; Remington Arms Co., Inc., AR; Weatherford Aerospace Inc., TX; Texas Arai, TX; Victor Equipment Co. - Denton, TX; Victor Equipment Co. - Abilene, TX; Dallas Semiconductor, TX; Chem-Fab Corporation, TX; Intercontinental Manufacturing, TX; Danaher Tool Group, AR; East Texas Engraving Company, TX; Philips Semiconductor, TX; Philips Semiconductor, NM; Jan-Eze Plating, Inc., AR; Gulfstream Technologies, Inc., OK; and Parker Hannifin Corporation, AR.

HS Resources: On August 9, 2000, The United States lodged a Consent Decree in the Western District of Louisiana to address HS Resource's ten Clean Water Act violations involving dredging and filling of wetlands. Clean Water Act Section 404(a), 33 U.S.C. § 1344(a) allows the U.S. Army Corps of Engineers to issue permits for activities that impact wetlands. HS Resources, a California-based oil and gas exploration company failed to obtain 404 permits for its impacts. The activities took place between 1997 and 1999 and occurred in Beauregard, Acadia, Jefferson Davis, Calcasieu, and Allen Parishes in southern Louisiana and involved 20 acres of wetlands.

The settlement includes a \$700,000 penalty, and also requires HS Resources to spend \$500,000 acquiring wetlands habitat in the Calcasieu River watershed and convey the land to the Nature Conservancy, a nonprofit corporation, for preservation. This CWA 404 penalty is the largest of its kind ever imposed in Louisiana.

Texas Department of Transportation: In the last 5 years, the Corps of Engineers (COE) has taken 23 wetlands enforcement actions involving the Texas Department of Transportation (TxDOT) violation sites throughout Texas. The majority of these violations are permit condition violations where TxDOT obtained Clean Water Act (CWA) Section 404 permit coverage but failed to meet the permit's requirements. Failure to perform mitigation and failed attempts at mitigation are the most common types of violations. On February 7, 2000, the COE issued a Cease and Desist order for a wetland violation on a State Highway 6 project and another Cease and Desist order for a State Highway 35 project. On February 29, 2000, the COE issued another Cease and Desist order for a wetland violation on a U.S. Highway 87 project. All three violations of CWA 301(a), resulted from TxDOT failure to obtain necessary CWA 404(a) permits before beginning construction in wetland areas. On May 3, 2000, EPA requested the referral of the three violation sites. From April 2000, until November 2000, EPA negotiated with TxDOT to resolve the wetland violations.

On December 1, 2000, EPA Region 6 issued TxDOT an Administrative Complaint, under Section 309(g) of the CWA. A public notice of the Complaint received no comments from the public. A Consent Agreement and Final Order (CAFO) was negotiated, and on February 5, 2001, EPA filed the CAFO with the Regional Hearing Clerk. Pursuant to the CAFO, TxDOT will pay a \$100,000 fine and perform double the amount of wetland mitigation normally required by the COE at the three sites at issue. In a side letter, EPA agreed not to request nor accept a referral of the remaining 20 alleged permit condition violations for a period of one year, in order to give TxDOT time to address its remaining noncompliance with the COE directly.

Duran Campground, Taos County, New Mexico: EPA issued Administrative Penalty Order (APO) SDWA-6-00-1088 to the United States Forest Service (USFS) on August 17, 2000, for violations of the Safe Drinking Water Act (SDWA) at the Duran Campground in Taos County, New Mexico. The USFS failed to collect bacteriological samples at this system, thus violating the Total Coliform Rule. Subsequent negotiations with the USFS resulted in the issuance of a Consent Agreement and Final Order (CAFO) on September 24, 2001. Under the terms of the CAFO, the penalty was mitigated to \$15,200 and the USFS agreed to perform a Supplemental Environmental Project (SEP) with an adjusted value of \$80,578. The SEP consists of a training

program for operators who manage drinking water systems on National Forests and National Grasslands in the Southwestern Region of the Forest Service and on other Federal and State lands managed by other agencies who attend the program. The training program will improve operator knowledge of system maintenance, sampling requirements, and public health risks posed by drinking water. Operators, line officers and appropriate staff at the Forest and District level and at other Federal and State agencies will gain awareness and understanding of state and federal regulatory requirements as they apply to drinking water systems. Instructors will emphasize transient non-community water systems, an area not usually addressed in operator training.

Pueblo of Acoma: Located in New Mexico, the Pueblo has undertaken the clean up of toxaphene pesticide contaminated soils in the tribal stock yards, EPA ID NM0011091230. Remediation was conducted under administrative authority of Section 7003 of RCRA, Docket No. RCRA-06- 2001-0912, dated September 26, 2001. The environmental benefits of this action include the destruction by anaerobic digestion to the persistent chlorinated pesticide contaminating soils, in addition the work is being performed by Acoma people giving them experience in environmental work and providing training and jobs. There are many small toxaphene contaminated sites on tribal lands in the southwest, the experience gained here will assist First Peoples in caring for their lands.